



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON, DC 20310

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MEMORANDUM FOR THE DIRECTOR OF CIVIL WORKS *John,*

SUBJECT: Analysis of Lakeshore Management Regulations

Recent discussions concerning the Lakeshore Management Plan at Lake Eufaula have raised the question of the degree to which 36 CFR 327.30 and its underlying laws limit the flexibility of Corps managers in developing and enforcing Lakeshore Management Plans. In order to help us address this question, I would like an analysis prepared which indicates: (1) the restrictions that exist in law; (2) the restrictions that exist in the regulations but not in the law; and (3) the restrictions that exist in neither the law nor the regulations but are perceived as "sound administrative practice" necessary for good lakeshore management.

A suggested format for the report would contain three columns, headed "Policy," "Statutory Basis," and "Interpretation," respectively. The first column would list all of the policies embodied in CFR 327.30. The second column would cite the specific authority for each policy. The third column would explain how the statutory requirements have been translated in the policies embodied in 36 CFR 327.30.

Please provide the requested analysis by December 14, 1984.

Robert K. Dawson
Acting Assistant Secretary of the Army
(Civil Works)

Analysis
Lakeshore Management Regulation

C.F.R. Para No.	Lakeshore Management	Policy	Statutory Basis	Interpretation
327.30	Lakeshore Management		Section 4 of the 1944 Flood Control Act, as amended (16 USC 4603). The statute states in part "... the water areas of all such projects shall be open to public use generally for boating, swimming, bathing, fishing, and other recreational purposes, and ready access to and exit from such areas along the shores of such projects shall be maintained for general public use, when such use is determined by the Secretary of the Army not to be contrary to the public interest, all under such rules and regulations as the Secretary of the Army may deem necessary.	16 USC 4603 provides general authority to the Chief of Engineers under the supervision of the Secretary of the Army to promulgate rules and regulations for the use and occupancy of lands and waters and to enforce such rules and regulations. The regulations provide for control of existing private exclusive use while recognizing private investment at lake projects. The purpose of the regulation is to protect desirable environmental aspects of lake projects and to restore the shoreline where degradation has occurred through private exclusive use.
327.30 (d) (1)	Manage and protect shorelines at projects under Corps jurisdiction. Establish and maintain acceptable fish and wildlife habitat. Establish and maintain aesthetic and environmental conditions. Promote safe and healthful use of shorelines. Manage private exclusive use to the degree necessary to gain maximum benefits to the general public.		Section 4 of the 1944 FCA (16 USC 4603) NEPA (EL 91-190) Fish & Wildlife Coordination Act (EL 85-624) Federal Water Pollution Control Act (EL 92-500)	Lakeshore Management rules and regulations provide guidance to FOAs to comply with the cited statutes while providing sufficient flexibility to permit the regulation to apply to all lake projects which vary in terrain, lake configurations, vegetative cover, public use and commercial activities. The regulation is not intended to provide site specific guidance at each lake. Individual plans are developed within the general guidelines contained in the regulations.
327.30 (d) (2)	At new projects or projects where private exclusive use does not exist it will not be permitted unless to honor past commitments.		Section 4 of the 1944 FCA (16 USC 4603)	Private exclusive use activities have not been permitted at new projects unless there was prior commitment.

The public and adjacent landowners have accepted this policy at new projects. Management problems and costs are reduced when private exclusive use has not occurred.

327.30(4) (3) A lakeshore management plan will be prepared for each project when private exclusive use exists.

Section 4 of the 1944 FCA (16 USC 460d)

Lakeshore management plans will be prepared to regulate and control private use activities to assure that public lands are not converted to private use.

Corps will honor past commitments.

Recognizes commitments made prior to the development of a lakeshore management plan.

Public participation in preparation and implementation of the plan.

Public input is obtained thru workshops, public meetings and comment periods.

A policy statement will be prepared for lakes where private exclusive use does not exist.

At projects where no private use exists the policy statement establishes the policy for that particular lake.

327.30(4) (4) Use of noncommercial marinas.

Section 4 of the 1944 FCA (16 USC 460d)

Boat owners are encouraged to use marinas to aid recreationalists to remain profitable and to assure continuing services to the public.

327.30(4) (5) Community docks will be encouraged. Individual docks will be permitted.

Section 4 of the 1944 FCA (16 USC 460d)

Community docks are encouraged to consolidate docks and to reduce shoreline used. Reduces administrative costs.

327.30(e) (2) Lakeshore management plans will be prepared as soon as practicable.

Section 4 of the 1944 FCA (16 USC 460d)

Plans prepared as soon as practicable so the using public is knowledgeable of what may be permitted and where permitted. Permit actions will be held in absence while the plan is being prepared and completed.

Moratorium on accepting permit applications until plan is completed.

Inform individuals at the earliest date of decision on lakeshore use.

Adjacent landowners should be advised as soon as possible as to the lakeshore allocations and where private exclusive use will be permitted. Division approval is in accordance with other delegations of approval authority.

Approval by division engineer.

- 327.30(e) (3) Information on land and water activities will be included in the plan. Section 4 of the 1944 FCA (16 USC 460d) Lake management plans address activities on land and water pertinent to the effective management of the shoreline.
- 327.30(e) (4) Entire lakeshore will be allocated to one of four lakeshore allocations. Section 4 of the 1944 FCA (16 USC 460d) The entire shoreline at projects whose private exclusive use occurs is allocated to four uses to assure that proper constraints are applied to areas having unique characteristics or requirements.
- 327.30(e) (4) (i) Limited development Section 4 of the 1944 FCA (16 USC 460d) Allocation designates that portions of the shoreline where private boat docks will be permitted. Chemical vegetative modification will be in accordance with Federal Regulations.
- 327.30(e) (4) (ii) Public recreation Section 4 of the 1944 FCA (16 USC 460d) Private exclusive use is not permitted in designated recreation areas or within a buffer zone on either side of the recreation area which may vary depending on terrain, vegetative cover and access.
- 327.30(e) (4) (iii) Protected lakeshore Section 4 of the 1944 FCA (16 USC 460d) Shoreline areas which are not suitable for private boat docks due to siltation, rapid channeling or exposure to high winds and currents. Private exclusive use is limited to protect aesthetic, environmental and fish and wildlife values in accordance with EL 91-190. Vegetative modification will be permitted after careful consideration of the effects.
- 327.30(e) (4) (iv) Prohibited access Section 4 of the 1944 FCA (16 USC 460d) Private exclusive use is not permitted to protect ecosystem or physical safety of the visitor from hazardous conditions.
- 327.30(e) (5) Public participation will be used to the maximum extent practicable in the preparation and revision of lakeshore management plans. Section 4 of the 1944 FCA (16 USC 460d) The preparation and major revisions of lakeshore management plans are developed with public input into their preparation through work shops, public meetings and written comment periods.

- 327.30(f) (1) Lakeshore use permits will be enforced in accordance with Section 327.19 Chapter III, Title 36 CFR. Section 4 of the 1944 FCA (16 USC 4603) The lakeshore management regulation was made a section in Chapter III, Title 36 CFR and is enforceable in court when violated.
- 327.30(f) (2) Section 10 permits will be issued on navigable waters. Lakeshore management permits will not be used. Section 10, Rivers and Harbor Act of 1899 (33 USC 403) Title 36 permits are limited to lake projects where the government has a fee interest of adjacent shoreline. Title 36 permits are not issued on navigable waters. The activities are the subject of Section 10 or Section 404 permits.
- 327.30(f) (3) Commercial development activities and activities involving changes in land form or land based support facilities will be covered by lease license or other real estate grant. Section 4 of the FCA (16 USC 4603) Commercial or private exclusive use activities which involve more than temporary use of government property such as grading, filling, excavation or construction of permanent facilities such as walks steps, etc require an instrument granting and interest in the property.
- 327.30(g) Permits may not be transferred Section 4 of the 1944 FCA (16 USC 4603) Permits are limited to right to use government property and no proprietary interest is granted. When facility is sold or otherwise disposed of the new owner must obtain a permit for the changed use. The ability to transfer permits would grant a proprietary interest in public property.
- 327.30(h) Facilities existing at the time lakeshore management plans are prepared will be grandfathered. Section 4 of the 1944 FCA (16 USC 4603) Existing private use activities located outside of designated areas will be permitted to remain in place until the facility is sold or the permittee dies. At that time the facility must be moved to an area designated for such use or removed from the lake.
- 327.30(i) Density of development is limited to 50% of the shoreline allocated to limited development. Section 4 of the 1944 FCA (16 USC 4603) Density is limited to 50% of the shoreline allocated to limited development to assure that access to and exit from the shoreline is maintained for use by the general public.

327.30(j)

A fee will be charged for issuing lakeshore use permits to offset the cost of issuance and administration of the permits.

Section 4 of the 1944 FCA
(16 USC 460d)
The act of August 31, 1951
(31 USC 9701)

Permit fees established to offset the costs of administering the lakeshore management permit program. Current fees do not reflect the current cost of administering the program.

327.30(k)

Lakeshore management plans will be prepared for all lakes where private exclusive use exists.

Section 4 of the 1944 FCA
(16 USC 460d)

Lakeshore management plans are required at all lakes where private exclusive use activities exist to regulate the use of project lands and waters.